

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VOLT ASSET HOLDINGS TRUST XVI,  
BY CALIBER HOME LOANS, INC.,  
SOLELY IN ITS CAPACITY AS SERVICER,

Plaintiff,

vs.

Civ. No. 13-508 KG/KK

MARIE A. MARTINEZ, A/K/A  
MARIE MARTINEZ,  
FELIX J. MARTINEZ, A/K/A  
FELIX JOE MARTINEZ,  
FELIX JOE MARTINEZ PUBLIC TRUST, AND  
SOUTHWEST FINANCIAL SERVICES, INC.,

Defendants.

ORDER

This matter comes before the Court upon Defendants' Motion for Leave to File Amended Answer filed by *pro se* Defendants Marie A. Martinez, a/k/a Marie Martinez, and Felix J. Martinez, a/k/a Felix Joe Martinez, (collectively, the Martinezes) on January 7, 2014. (Doc. 50). Former Plaintiff HSBC Mortgage Services, Inc. (HSBC)<sup>1</sup> filed a response on January 23, 2014, and the Martinezes filed a reply on February 6, 2014. (Docs. 43 and 52). Having considered Defendants' Motion for Leave to File Amended Answer and the accompanying briefs, the Court grants Defendants' Motion for Leave to File Amended Answer.

When the Martinezes first filed Defendants' Motion for Leave to File Amended Answer, they attached to it a proposed First Ammentdment [sic] to Answer and Affirmative Defenses

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<sup>1</sup> The Court subsequently substituted Volt Asset Holdings Trust XVI, by Caliber Home Loans, Inc., solely in its capacity as servicer, (collectively, Volt) as Plaintiff. *See* (Doc. 100). Since Volt assumes HSBC's litigation position, the Court does not differentiate between HSBC and Volt. Consequently, the Court will simply refer to "Plaintiff" throughout this Order.

(Amended Answer) with pages 7 and 9 missing. (Docs. 32 and 32-1). The Martinezes later corrected the proposed Amended Answer to include the missing pages. *See* (Doc. 50). The Martinezes claim that on December 17, 2013, well before they filed the January 7, 2014, Defendants' Motion for Leave to File Amended Answer, they delivered to Plaintiff, by email and certified mail, the complete proposed Amended Answer. (Doc. 30); (Doc. 52) at ¶ 1.

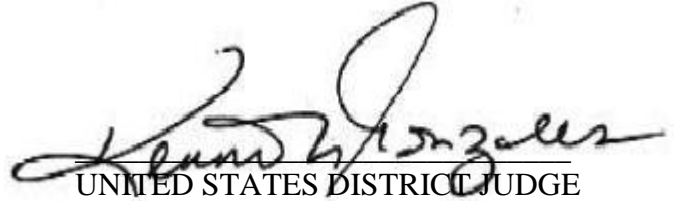
In its response, Plaintiff does not object to the filing of the proposed Amended Answer provided that the Court allows Plaintiff to reserve the right to object to the contents of missing page 7, which Plaintiff states it did not have an opportunity to review. If the proposed Amended Answer which Plaintiff received in December 2013 had missing pages, the Court assumes that Plaintiff would have contacted the Martinezes regarding those missing pages. Because there is no indication that Plaintiff notified the Martinezes regarding any missing pages, the Court concludes that Plaintiff received the complete proposed Amended Answer in December 2013. Accordingly, Plaintiff had an opportunity to review the entire proposed Amended Answer.

Plaintiff also contends that the Martinezes' "counterclaims, which they now seek to withdraw by amending their answer [to not include them], are completely without merit, and should be dismissed with prejudice." (Doc. 43) at ¶ 1. The Martinezes previously voluntarily dismissed the counterclaims without prejudice on December 17, 2013. (Doc. 29). Plaintiff, however, did not object at that time to the dismissal of the counterclaims without prejudice and cannot now move in a response to dismiss those counterclaims with prejudice. Moreover, should the Court allow the Martinezes to file their proposed Amended Answer, which does not contain the counterclaims, there would be no basis for the Court to dismiss non-existent counterclaims, with or without prejudice. The Court, therefore, denies, Plaintiff's present request to dismiss the

counterclaims with prejudice. Of course, should the Martinezes raise those counterclaims at a later date, Plaintiff is free to file a motion to dismiss those counterclaims at that time.

IT IS ORDERED that

1. Defendants' Motion for Leave to File Amended Answer (Doc. 50) is granted;
2. Plaintiff's request to reserve the right to object to the contents of missing page 7 of the proposed Amended Answer is denied;
3. the Martinezes have until June 17, 2015, to file their proposed Amended Answer; and
4. Plaintiff's request to dismiss the Martinezes' counterclaims with prejudice is denied at this time.



UNITED STATES DISTRICT JUDGE